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09/644,026	08/22/2000	Lytton A. Williams	22167-703	1293

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EXAMINER

PRIDDY, MICHAEL B

ART UNIT PAPER NUMBER

3732

DATE MAILED: 01/13/2004

22

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/644,026

Applicant(s)

WILLIAMS ET AL.

Examiner

Michael B Priddy

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 41-45, 47-58 and 63-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 41-45, 47-53 and 63-66 is/are allowed.
- 6) ☒ Claim(s) 67, 68, 70 and 72 is/are rejected.
- 7) ☒ Claim(s) 54-62, 69 and 71 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 66-71 been renumbered 67-72. Furthermore, it appears original claim 66 has not been listed in the present amendment. As of Amendment C filed 05/02/02, claims 66 depended from claim 53. The present claim 66 includes none of the language of the original claim 66 while no added or deleted language is indicated. It is the Examiner's belief that applicant has inadvertently omitted claim 66.

Claim 41 is objected to because of the following informality: in line 4 of claim --to-- should be added between "coupled" and "one".

Claim 54 is objected to because of the following informality: in line 11, "the of" should be deleted.

Claims 67-71 are objected to because of the following informality: in line 4, "plant member" should be --plate member--.

Claim 71 is objected to because of the following informality: in line 1, "66" should be--69--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 67 and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Büttner-Janz et al. Büttner-Janz et al. teaches an implantable device comprising: at least one intradiscal spacer 3; a first anchor plate 1 attachable to a vertebrae and configured to have the intervertebral device coupled thereto, the first anchor plate having a first plate member; a second anchor plate 2 attachable to a vertebrae and configured to have the intervertebral device coupled thereto, the second anchor plate having a second plate member, and one or more anchor elements 5 positioned on the first and second anchor plates.

Claim 72 is rejected under 35 U.S.C. 102(b) as being anticipated by Ray et al. (U.S. 5,026,373). Ray et al. teaches an intervertebral device comprising: first and second anchor plates 16 and an intervertebral device 10. The method of implantation is set forth beginning on line 40 of column 9. Note in lines 2-6 of column 10, Ray et al. describes cutting threads into the vertebral end plates and the cage 10 is subsequently threaded into the cut threads. It is the Examiner's belief that anchor plates 16 are, if not directly attached, attached to the end plates of the adjacent vertebra through their attachment to fusion cage (intervertebral device) 10.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 70 is rejected under 35 U.S.C. 103(a) as being unpatentable over Büttner-Janz et al. in view of Steffee. As set forth above, Büttner-Janz et al. teaches all of the limitations of the present invention except that the anchor elements comprise an outer wall defining an internal lumen positioned longitudinally within the at least one anchoring element.

Steffee teaches an artificial disc 5 which comprises an upper flate plate 12, a lower flate plate 14 and an elastomeric core 16 between the two rigid plates. Each of the plates is covered with a porous coating 26 and from each of the flat plates extend a plurality of anchoring elements 28 capable of being introduced into the vertebra. The anchoring elements each include lumens 29 therethrough which allow communication of the interior thereof with the exterior. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided lumens within the teeth of the prosthesis of Büttner-Janz et al. so as to allow for communication of the interior of the teeth with the exterior thereby improving biocompatibility and/or ingrowth characteristics.

***Allowable Subject Matter***

Claims 41-45, 47-53 and 63-66 are allowed.

Claims 54-62 would be allowable if rewritten or amended to overcome the objection set forth in this Office action.

Claims 69 and 71 would be allowable if rewritten to overcome the objection set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael B. Priddy whose telephone number is (703) 308-8620. The examiner can normally be reached on Mon.-Fri. 8 a.m. - 5 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Michael B. Priddy

*Michael B. Priddy*  
January 12, 2004

*Cary E. O'Connor*  
Cary E. O'Connor  
Primary Examiner